

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7867 OF 2006

Vijay Dadaso Ghadge ..Petitioner

Vs.

Shri Sanjay Shinde,
Returning Officer,
Shri Jarendeshwar Sahakari Sakhar
Karkhana Ltd.,Chimangaon & Ors. ..Respondents

Mr.V.S.Kapse with Mr.A.J.Kenjale for the petitioner

Mr.R.S.Apte with Mr.S.A.Sawant for respondent no.2

Mrs.Sushma Bhende, A.G.P. for the state

CORAM : A.P.DESHPANDE, J

DATED : 1ST DECEMBER, 2006

P.C.:

1. The respondent no.2 Sugar Factory is a specified co-operative society and hence, the election has to be held by the Collector. After the election process for electing the Board of Directors commenced, the petitioner being desirous of contesting the election, filled in nomination paper. On an objection being raised at the time of scrutiny, the returning officer rejected the nomination on two grounds: Firstly, that for the

last three years, the petitioner has not supplied sugar-cane to the Karkhana and secondly, that the petitioner has failed to pay deficit amount towards the share. Aggrieved by the order passed by the returning officer, the petitioner carried an appeal u.s.152A of the Maharashtra Co-operative Societies Act to the Additional Commissioner. The Additional Commissioner rejected the appeal solely on the ground of non-impledment of validly nominated candidates as party respondents in the appeal.

2. The learned counsel for the petitioner submits that the requirement of impleading of the validly nominated candidates is an requirement for filing of an election petition and the relevant rules cannot be applied for filing of an appeal u.s.152 A of the Act. Though the point is arguable what is to be seen is that as per the election programme, the last date for withdrawal of nomination form is expiring today at 3 p.m. and only if more than one candidate are in the fray, the question of voting would crop up which is fixed on 17.12.2006. The question is, is it possible to decide the matter without disturbing the process of

election. Even assuming that after hearing all concerned, it is possible to decide the writ petition and further assuming that the petitioner succeeds in this writ petition, still that is not the end of the matter for the reason that the appellate authority has rejected the appeal solely on the ground of non impleadment of validly nominated candidates as party respondent. After the said order is quashed and set aside, the matter is required to be remanded back to the appellate authority for afresh decision u.s.152A of the Act and all this cannot be achieved in a short time without halting or obstructing the election process which is wholly impermissible, having regard to the law laid down by the Apex Court in the case of Sant Satguru reported in 2001 (8) SCC 509. It shall be open for the petitioner to file an election petition after the declaration of the result. In the result, writ petition, is summarily dismissed.

(SHRI A.P.DESHPANDE, J)